- 85-1181

No. 85-1189

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

REGINA S. ENNIS,

Petitioner,

—v.—

NEW JERSEY BELL TELEPHONE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

Petitioner: Regina S. Ennis

Respondent: New Jersey Bell Telephone Company*

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* Pursuant to Rule 28.1 of the Rules of the Court, the following is a listing naming all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates of respondent New Jersey Bell Telephone Company: Bell Atlantic Corporation and the Bell Atlantic companies, namely, Network Services, Inc., Bell of Pennsylvania, C&P Telephone Companies, Diamond State, A Beeper Company Associates, Bell Atlanticom Systems, Inc., Bell Atlantic Mobile Systems, Bell Atlantic Properties, CompuShop, Inc., MAI Canada, Ltd., Sorbus, Inc., Telecommunications Specialists, Inc., and TriContinental Leasing Co.

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Opinions Below

The Memorandum Opinion of the court of appeals, which is not yet reported, appears in Appendix B to the petition. The Opinion of the district court dismissing this action, which also is not reported, appears in Appendix C to the petition. The court exhibits attached to and referenced in the district court Opinion, which were omitted from the petition, appear in Appendix A to this brief.

COUNTERSTATEMENT OF THE CASE

This case of alleged race and sex discrimination was filed in November, 1980. It was dismissed four years later, as a consequence of petitioner's and petitioner's counsel's persistent failure to comply with discovery orders and obligations. As described by the courts below, counsel's conduct showed " 'total disregard' and 'indifference' of an 'unconscionable' nature toward her obligations as counsel, her responsibilities to her adversary, and toward the court's orders" (B-6). She was found to be "fearless in her indifference to [the district] court's order: she has never given the court any indication that she appreciates the gravity of her conduct" (B-7).

The course of conduct that prompted these findings is detailed in the district court and Third Circuit opinions and, therefore, will not be restated herein. A summary is sufficient to show it was egregious, that it was not attributable to physical disability, and that it continued despite repeated—and often extreme—efforts of the district court to accommodate petitioner's counsel.

The first pretrial order in this action, entered on June 15, 1981, required petitioner to file her expert reports by July 21, 1981, and set trial for September 21, 1981. At petitioner's counsel's request, the date for serving expert reports was extended to November 2, 1981 and the date for trial was adjourned to December 14, 1981. Petitioner's counsel, however, did not comply with the extended date for serving expert reports, and, on December 2, 1981, she requested that trial be adjourned again, on the ground that she had a previous trial commitment. That request was granted, and trial was rescheduled for March 10, 1982, with the caveat that further applications for adjournments would not be favorably received. When petitioner's counsel reported in March that she was to be hospitalized, however, the court granted a third adjournment of trial, to July 6, 1982.

In anticipation of that trial date, a final pretrial order was entered on May 25, 1982. At this time—nearly a year after she had been required to do so—petitioner identified her experts as Dr. William King and Dr. Jerome Staller. Yet, reports of these experts were still not produced. At petitioner's request, on the ground that she would be undergoing surgery, trial was adjourned for a fourth time, to October 18, 1982.

Having been granted this additional adjournment, petitioner's counsel revealed that she had obtained a new expert, Bernard Orr. However, no report of Mr. Orr or of her other experts was provided. When respondent requested same, pursuant to the court's prior orders, petitioner's counsel replied that respondent should file a motion. Respondent did apply to the court, and the magistrate handling the matter attempted to arrange a conference call. Petitioner's counsel, however, advised the court that she was in trial the entire week and unavailable, and when the Magistrate called to suggest alternative dates, she simply did not return his calls. As a consequence, an order was entered on October 13, 1982, barring use of petitioner's experts at trial. This order, unlike the Magistrate's prior attempts to schedule a conference, provoked an immediate response from petitioner's counsel. She sent him a "vituperative letter" (C-6), demanding that he vacate his order and recuse himself from the case. Then, "in total disregard of the import of the order entered by the Magistrate (or of its binding effect)" (C-6), petitioner's counsel offered to make her experts available for depositions. She also moved before the district court to vacate the order barring use of her experts, asserting that her application was "necessitated by the unethical and unjudicious conduct of opposing counsel and Magistrate James F. Hamill."

Although it found that petitioner's counsel's conduct demonstrated "an arguable indifference on [her] part . . . to discovery obligations that either arise under the rules of our court or arise by reason of the fact that they have been ordered to be done by a judge of this court" (C-8), the district court

decided "to err on the side of generosity" (C-9). The court vacated the order barring expert testimony, ordered petitioner to supply expert reports by December 1, 1982, and warned that *serious* consequences would accompany any further defaults. But the generosity of the court was to no avail; this extended date too passed without expert reports being served.

After a further status conference in June 1983, petitioner's counsel was afforded yet another chance to produce the reports that had been required by four prior orders, and, on August 16, 1983, she finally produced an undated and unsigned document that purported to be Dr. King's written report. She also advised respondent at this time that she had retained a new expert, Dr. James W. L. Cole. Dr. Cole's report was summarized in an August 30, 1983 letter from petitioner's counsel.

Respondent's deposition of Dr. King commenced on October 21, 1983, after two last-minute cancellations by petitioner's counsel, but it was not productive. Petitioner's counsel instructed Dr. King not to answer scores of relevant questions about petitioner's condition and his treatment; she refused to produce records and notes that Dr. King used to refresh his recollection; and she refused to produce the tape-recorded report of Dr. King, from which her office staff had prepared the written report served upon respondent.

As a consequence of these refusals, respondent filed a motion to compel discovery, returnable on short notice due to the impending trial date of November 7, 1983. This motion was adjourned at petitioner's counsel request on three separate occasions, covering a span of six weeks, but each time, she let the extended due date for her answering papers pass without filing or even timely applying for a further extension. Finally, on December 30, 1983, the magistrate issued a letter opinion requiring petitioner's counsel to produce Dr. King for a continued deposition, to allow him to answer certain questions, and to produce petitioner's medical records and Dr. King's tape-recorded report for inspection and copying within ten days.

Petitioner's counsel failed to comply with this order. Two letters from respondent demanding production of the subject documents and proposing deposition dates were ignored. Instead, on January 17, 1984, petitioner's counsel wrote to the magistrate requesting an additional ten days to file papers in opposition to respondent's original motion; she totally disregarded the facts that the motion had been ruled on in December and that she was in contempt of the court's ruling. On January 20, the magistrate declined to reopen the motion, finding that petitioner's counsel's health was not the reason for her lack of compliance.[1] Despite this, the magistrate extended petitioner's time to file a motion for reconsideration to January 27, 1984 and provided that his prior order would be stayed upon filing of such a motion.

Once again, however, petitioner's counsel failed to take advantage of the magistrate's efforts to accommodate her. No motion for reconsideration was filed. Instead, petitioner's counsel wrote an accusatory letter to the magistrate in which she informed him:

> I . . . will not do anything until you reconsider and pass on the total unfairness of your conduct either by design, happenstance, or misinformation (C-20).

Despite the tone of petitioner's counsel's letter, the magistrate again extended her time to file a reconsideration motion and to comply with his December order. However, the new date of February 6, 1984 also passed without action by petitioner's counsel. After attempting unsuccessfully to contact petitioner's counsel on February 29 and March 2, 1984, respondent filed a motion on March 2, 1984 to dismiss the complaint pursuant to Rule 37(b) of the Federal Rules of Civil Procedure.

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1 The Magistrate recognized that contrary to petitioner's bare assertion, it was not any physical incapacity that prevented her counsel from responding to respondent's October 31, 1983 motion; in fact, it was not until November 29, 1983 that petitioner's counsel notified the court and respondent of any physical incapacity after May 1, 1983.

At oral argument, petitioner's counsel attacked the merits of the order compelling discovery, but did not even attempt to explain her failure to comply with it. As described by the district court, petitioner's counsel "argued that the discovery problems were not priority matters, and should have been resolved on the phone, ignoring the fact that she did not return defense counsel's calls and did not initiate any phone conversations" (C-23). The court further found that she "showed a total lack of appreciation of her responsibility to comply with the Magistrate's Order" (C-23). Nonetheless, the court again decided not to dismiss the case. Instead, it barred trial testimony from petitioner's experts, assessed counsel fees against petitioner's counsel, directed petitioner to comply with outstanding discovery orders dating as far back as 1981, and warned petitioner's counsel that the action would be dismissed if she were not ready for trial on April 30, 1984. The court also directed petitioner's counsel to consider and discuss with petitioner whether, in view of her difficulties in fulfilling her responsibilities in this case, it was advisable for her to continue as counsel.

During the weeks following her receipt of the court's April 3, 1984 order, "Ms. Thompson made no attempt to contact the court or defense counsel about her failure to comply" with that order (C-27). On April 20 and 23, 1984, respondent's counsel, facing a peremptory trial date of April 30, 1984, attempted to discuss with petitioner's counsel the requirements of the court's order, but without success.[2]

On April 23, 1984, respondent's counsel, scheduled to begin trial in seven days without the discovery compelled by the court's prior orders, moved again to dismiss this action under Rule 37(b). The magistrate adjourned respondent's motion to

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2 Petitioner's counsel's failure to comply with the court's order or to contact respondent's counsel as to her intentions regarding compliance was not due to any alleged physical incapacity; indeed, petitioner's counsel stated that on April 23, 1984 she went from one trial directly into another.

May 18, 1984, and directed petitioner's counsel to make returnable on that same date any motion for certification of the court's April 3, 1984 Order pursuant to 28 U.S.C. § 1292(b). Plaintiff filed that motion on May 10, 1984, two weeks out of time.

On May 18, 1984, the district court heard oral argument on both motions. As stated by the court, petitioner's counsel's arguments "could not satisfactorily justify her failure to comply, or absent compliance, to seek relief from the court in advance of the deadlines contained in the Order" (C-29). The court found:

> Again, Ms. Thompson's comments and conduct evidenced an indifference to her obligations to the court and defense counsel. Although she relied upon her disabilities as an excuse and blamed defense counsel for her predicament, the inescapable conclusion is that she was, once again, at least in a position properly to apprise the court and defense counsel of the status of her progress in complying with the court's order and to seek relief if necessary, and that she utterly failed to take the appropriate action.

(C-30).[3]

On September 13, 1984, the district court issued its opinion and order, dismissing the action with prejudice. After a detailed examination of the entire record and balancing of the appropriate factors, the court concluded:

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3 Thus, petitioner's assertion, made for the first time in her petition, that "[a]t all times, petitioner's counsel candidly kept both the court and opposing counsel informed, both before and after the facts, of the basis for the delays, clearly attributing them to her illnesses and resulting physical incapacity" (Petition at 19), is directly contrary to the record below and the specific findings of the district court based upon that record. Keeping the court and opposing counsel informed as to the reasons for her noncompliance with discovery obligations and court orders is precisely what petitioner's counsel failed to do.

> Plaintiff's counsel's physical disabilities have contributed to her failure to properly prosecute this matter. There is no disputing that. And the court has been sympathetic and understanding. It has been more; it has bent over backwards to allow counsel to present plaintiff's case. But what the court took great pains to excuse continually as counsel's inability to perform her duties, it can no longer so excuse. Looking back over the years of this aged litigation, there emerges a pattern of indifference on Ms. Thompson's part to the orders of this court and the right of the defendant and defense counsel.
>
> * * * *
>
> In conclusion, the court can but reiterate its belief that considering Ms. Thompson's conduct in light of the age of this matter and all past unsuccessful attempts to accommodate her and impose sanctions on her and her client, the court is left with no alternative but to dismiss this action with prejudice. Accordingly, the defendant's motion will be granted. Plaintiff's motion is therefore moot.

(C-30-31; C-34).

On August 12, 1984, the United States Court of Appeals for the Third Circuit affirmed for the reasons set forth in the district court's exhaustive opinion and from the bench (B-4). It found that the record supports the conclusion that the district court properly considered all the appropriate factors in dismissing the action (B-9). "Indeed, based on this record, the district court had no other alternative" (B-9).

REASONS FOR DENYING THE WRIT

The court of appeals decision is correct and not in conflict with any decisions of this Court or another court of appeals. The issues presented are factual and unique to this case. As a consequence, they will not impact future actions and do not warrant review by this Court.

A. No right to counsel question is raised by this case; this issue was not raised or decided below and there is no basis for raising it now.

Petitioner argues that she was denied her due process right to counsel by the dismissal of her case for failure to comply with court orders and rules. However, this issue was not raised or decided below, and there is no basis in the record for raising it now.

Throughout the course of this litigation, petitioner has been by represented by the counsel of her choice, Beverly K. Thompson, Esq., the same counsel who appears for her here. Despite knowledge of Ms. Thompson's "trouble with compliance with court orders and rules," and despite advice about the wisdom of obtaining new counsel, petitioner chose to continue with Ms. Thompson's representation (C-32 to 34; B-4 to 5). At no time was petitioner unrepresented, and at no time was she forced to accept representation by anyone other than her counsel of choice.

As a consequence, neither *Unger v. Sarafite*, 376 U.S. 575 (1984) (no counsel), nor *Morris v. Slappy*, 461 U.S. 1 (1983) (substituted counsel) are apposite. Moreover, as this Court stated in *Ungar v. Sarafite*, 376 U.S. at 589, "it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel." Indeed, the Court in that case held that five-days' notice of a hearing was not constitutionally inadequate, especially in view of the fact that a motion for a

continuance was not made until the day of the hearing. 376 U.S. at 590. In the case at bar, in contrast, petitioner was given weeks and months of extensions, despite her repeated failure to request extensions until after the time for compliance with orders or filing of papers had long expired, and her failures to offer adequate or, on some occasions, any excuse at all.[4]

In sum, petitioner's unfettered choice of Ms. Thompson as counsel and her knowing assumption of "personal responsibility" for her attorney's willful malfactions (B-4), preclude any claim here that the dismissal somehow deprived petitioner of her right to counsel. Having truly selected Ms. Thompson as her counsel, petitioner may properly be required to bear the sanction of dismissal as a consequence of her acts or omissions. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 633 (1962).

B. The court of appeals opinion that the district court did not abuse its discretion in dismissing this action is correct and not in conflict with any other court.

Petitioner does not dispute that the Third Circuit was correct in applying the standards established by this Court in *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643 (1976), and *Societe Internationale v. Rogers*, 357 U.S. 197 (1958). Rather, she contends that the district court misinterpreted the facts, and equated an alleged "inability" of counsel to comply with prohibited "willfulness" or "callous disregard" of her responsibilities. This argument is unfounded and fails to present a question warranting review by this Court. The district court's dismissal of this action and the Third Circuit's affirmance thereof were based upon specific and numerous findings of willfulness; and those findings are amply supported by the record.

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4 As the record demonstrates, Ms. Thompson's "troubles with compliance" were not justified, as she claims here, by physical disabilities. Rather, as both courts concluded, Ms. Thompson's derelictions were largely the result of a "total disregard" and "fearless indifference" toward her obligations to respondent and the court (B-6; B-7; C-6; C-31).

The dismissal of this action by the district court followed an exhaustive review of the record, including a comparison of Ms. Thompson's verified periods of disability with the many reasons she offered for her failures to comply with court directives and discovery requests. As the record shows, petitioner's counsel offered many explanations to the trial court which belie the claim that her derelictions were caused solely by her physical disabilities, including untimely receipt of mail and address changes of which the court and defendant were not apprised (C-17; C-20; C-27; C-28), preoccupation with trials and court appearances in other matters (C-6; C-27), and recriminations against respondent and the court (C-6; C-7; C-20; C-22; C-27; C-29). (See also C-19; C-21; C-27; C-29). Petitioner offered no excuse for some derelictions (C-6; C-15; C-19; C-22); and offered inadequate explanations for others (C-8; C-17; C-29 to 30). Finally, she told the court that "discovery problems are not matters of priority" (C-23).

While the district court had resolved to "err on the side of generosity" and resolve doubts in favor of petitioner whenever her failures "may arguably be the product of these disabilities", it was finally forced by the facts of record to find the opposite (C-9; C-31).

The district court expressly held:

> Ms. Thompson's comments and conduct evidenced an indifference to her obligations to the court and defense counsel. *Although she relied upon her disabilities as an excuse and blamed defense counsel for her predicament, the inescapable conclusion is that she was . . . at least in a position properly to apprise the court and defense counsel of the status of her progress in complying with the court's order and to seek relief if necessary, and that she utterly failed to take the appropriate action* (C-30; emphasis added).[5]

* * *

5 This finding is amply supported by the record. While petitioner's counsel's unsupported excuses do not justify her actions, her failure to seek relief from the court's orders is even less justified.

> Ms. Thompson is fearless in her indifference to this court's orders; she has never given the court any indication that she appreciates the gravity of her conduct (C-31).

The court of appeals held that the district court's findings were supported by the record (B-9), and that they met the standard of "willfulness" or "bad faith" (B-7) established by this Court in *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. at 643, and *Societe Internationale v. Rogers*, 357 U.S. 197. Neither court confused evidence of "inability" with evidence of "willfulness". Both courts correctly found that there was ample evidence that counsel's numerous defalcations were the product of a "callous disregard" of her responsibilities, and not of any physical disability.

C. The court of appeals correctly applied its own standards in affirming dismissal of this case.

Petitioner argues in her third point that the court of appeals "misapplied its own guidelines" (Petition at 17) in affirming the district court judgment. However, the "error" upon which this contention is based is merely an alleged disapproval of factual findings with which petitioner disagrees. This argument—that the district court made erroneous factual determinations that were erroneously affirmed by the court of appeals—fails to present a question warranting review by this Court. Moreover, it is simply not supported by the record.

The court of appeals assessed the judgment below according to the well-settled principle that its role was not to decide whether it would have reached the same result, but whether the district court abused its discretion. *See National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. at 643; *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d 863 (3rd Cir. 1984). Accordingly, the court of appeals considered only the manner in which the trial court balanced the appropriate

factors, enumerated in *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d at 865, and set forth below. Holding that the district court's dismissal of this action followed proper consideration of these factors, the court of appeals concluded: "Indeed, based on this record, the district court had no other alternative" (B-9).

1. *Party's Personal Responsibility*

As the record demonstrates, petitioner was fully apprised of her counsel's "troubles with compliance" with court orders and rules (C-32 to 34; B-4 to 5). Petitioner's counsel was admonished in open court for her derelictions (C-8 to 13; C-24 to 26). Sanctions were imposed (C-25; C-13 to 15). Through her counsel, petitioner was advised, at least twice, to seek substitute counsel because of her attorney's "troubles with compliance", but she refused to do so (C-32 to 34). Thus, there was sufficient evidence for the finding that petitioner bore personal responsibility for her attorney's conduct.

2. *Prejudice to the Adversary*

The record amply supports the district court's conclusion that respondent was prejudiced by: (1) the "intolerable" delays caused by petitioner's counsel's repeated non-compliance with orders and rules and other dilatory tactics; (2) the inevitable dimming of witnesses' memories; and (3) the loss of evidence (B-5). As the facts show, respondent was forced repeatedly to enlist court assistance to compel discovery, answer belated, groundless motions and appeals for reconsideration of discovery orders (C-4; C-5; C-6; C-7; C-8; C-16; C-17; C-19; C-28; C-29), attend depositions that were cancelled at the last minute or prematurely cut-off by improper instructions from petitioner's counsel (C-15), and consume inordinate amounts of time trying to locate petitioner's counsel to attempt resolution of discovery matters (C-19; C-21; C-27). While petitioner argues that respondent has not presented any proof establishing a disparity between the lost evidence—a dictation tape of Dr. King's expert report—and the witness' final report, that is

precisely the point. Since, as petitioner explained (five months after being ordered to produce the tape), the evidence was lost without ever being produced, respondent was left with only petitioner's characterization of its content (C-23).

3. *History of Dilatoriness*

It is difficult to imagine a record more replete with dilatoriness. The district court's 24-page opinion cites delay upon delay occasioned by petitioner's numerous failures to comply with court orders and discovery requests, her counsel's failures to apprise the court of her address changes, her failures to proceed with depositions and other discovery, and her frequent, out-of-time requests for continuances and reconsiderations.

Petitioner presents here, as she did below, a curious breakdown of the delay that has plagued this action, in which she attributes more delay to respondent than to herself (Petition at 21-24). Her account is inaccurate. It glosses over the most critical time periods of her own delay—those with which the court below was most concerned—and inaccurately refers to an alleged period of inability of petitioner's counsel not supported by the record. Moreover, it mischaracterizes the reasons for adjournments sought by respondent. As the district court found, "her characterization of defense counsel's conduct between November 1982 and October 1983 was inaccurate, to say the least" (C-22). More importantly, delay, of itself, did not bring about dismissal of this action; it was petitioner's counsel's refusal to comply with the district court's orders without even timely seeking relief from those orders. Most lawyers would be "shaking in their boots" if they had not complied with a court order. Indeed, having failed to comply with a court discovery order at the time the motion for sanctions was served, one would think that petitioner's counsel would have made every effort to show good faith by attaining full compliance at the time the motion was made. But petitioner's counsel did not even belatedly comply.

4. ***Willfulness or Bad Faith***

Petitioner insists here, as she did below, that all of her discovery failures were attributable to her counsel's illness. But after a detailed inquiry, and comparison of the verified periods of petitioner's disability with her conduct and other explanations below, the district court concluded that "what the court took great pains to excuse continually as counsel's inability to perform her duties, it can no longer so excuse" (C-31). As the record shows, petitioner's counsel offered many explanations to the trial court which belie her claim that derelictions were caused solely by counsel's physical inability: untimely receipt of mail and of address changes of which the court and defendant were not apprised (C-17), preoccupation with other trials (C-6), and recriminations against defendant and the court (C-27; C-29).[6] As the court of appeals concluded on this record, the district court's findings that Ms. Thompson's conduct showed a "total disregard" toward her obligations as counsel "and fearless . . . indifference" to the court's orders, met the condemned conduct standard of "willfulness" or "bad faith".

5. ***The effectiveness of alternative sanctions***

Prior to the dismissal, the court had already imposed many of the alternative sanctions suggested by Rule 37. Counsel was frequently warned and reprimanded on the record in open court (C-8 to 13; C-24 to 26). Costs had been assessed against petitioner and her counsel and evidence had been excluded (C-25; C-13 to 15). Nevertheless, petitioner and her counsel continued to fail to obey court orders, and as of today, at least one of those orders remains unsatisfied (C-26). In light of petitioner's refusal to secure new counsel and Ms. Thompson's lack of appreciation for "the gravity of her conduct", the court had no alternative short of dismissal (B-8; C-31).

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6 While petitioner's counsel accuses respondent's counsel of delay, she fails to explain that these delays were attributable to her own unavailability and conduct of discovery.

6. ***The merit of petitioner's claims***

The court of appeals did *not*, as petitioner claims, "use a summary judgment standard" in evaluating this factor (Petition at 26). Rather, it observed that the district court's comments on the evidence while entertaining motions for summary judgment (which the court denied), showed that it assessed the merits of petitioner's case as "marginal" (B-8 to 9). In affirming dismissal here, the court of appeals thus correctly evaluated this factor along with the others articulated in its earlier decision in *Poulis*.

In sum, there was ample evidence in the record to support the district court's dismissal of this action. Therefore, the court of appeals correctly affirmed the judgment, in accordance with its own standards and those of this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANCIS X. DEE,
Counsel for Respondent

Dated: February 21, 1986

APPENDIX A

[Letterhead of SEGAL & THOMPSON, P.A., Mt. Laurel, N.J.]

February 24, 1981

Honorable John F. Gerry
United States District Court
District of New Jersey
Camden, New Jersey 08101

Re: Regina Ennis v. New Jersey Bell Telephone
Civil Action No: 80-3633

Dear Judge Gerry:

Oral argument has been set for March 6, 1981 on the Defendant's Motion for an Order to Vacate Default Judgment in the above-captioned matter. In regard thereto, please be advised that unforeseen circumstances have necessitated my hospitalization and result in unavailability to argue same. I have spoken with Judith Musicant, Esquire, Attorney for the Defendant, New Jersey Bell Telephone, and she consents to a postponement on the return date and Oral Argument on her Motion. Therefore, it would be most appreciated if the matter could be rescheduled approximately six weeks into the future. If this is not possible, please contact my associate, Theordore J. Segal, Esquire, as he will be covering my cases in my absence.

Your time and cooperation are greatly appreciated in this matter. Should you have any questions, please do not hesitate to contact my associate or my secretary, Joeann Buchholz.

Very truly yours,

/s/ BEVERLY K. THOMPSON
Beverly K. Thompson

BKT/jb
c.c. Judith Musicant, Esquire

[Letterhead of NEW JERSEY BELL TELEPHONE COMPANY, Newark, N.J.]

November 20, 1981

Hon. James F. Hammill
U. S. Magistrate
430 U. S. Court House
401 Market Street
Camden, New Jersey 08101

Re: Ennis v. New Jersey Bell
Civil Action No. 80-3633

Dear Judge Hammill:

While I have received notice that trial in this matter had been set down to begin on December 14, 1981, opposing counsel and I find that we must request an adjournment in light of previously scheduled trials. I am presently scheduled to begin a trial in Federal District Court in Newark on December 15, 1981, and I understand that Ms. Thompson also has a conflict.

Additionally, in spite of continuing efforts, she and I have found it difficult to complete discovery and conduct meaningful settlement discussions due to Ms. Thompson's unfortunate disability and difficulties in obtaining experts' reports.

In light of the foregoing Ms. Thompson and I feel that a March trial date would provide the necessary time to complete discovery, explore settlement and fully prepare for trial. Accordingly, I respectfully request that such an adjournment be granted in this matter.

Very truly yours,

/s/ JUDITH S. MUSICANT
Judith S. Musicant

JSM:gml

cc: Hon. John F. Gerry
Beverly K. Thompson, Esq.

[Letterhead of SEGAL & THOMPSON, P.A., Mt. Laurel, N.J.]

Please Reply To: Phila.

March 16, 1982

Honorable John F. Gerry
United States District Court
District of New Jersey
Camden, New Jersey 08101

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No: 80-3633

Dear Judge Gerry:

This is to advise you that I am presently a patient in the Hospital of the University of Pennsylvania for further treatment of a recurrent disability and do not anticipate returning to my professional responsibilities until July 1, 1982, as indicated by my surgeon. I have enclosed a copy of Dr. Gennarelli's letter substantiating these facts. I would be very grateful if you would postpone any action until after July 1, 1982.

Thank you for your understanding and cooperation in this matter.

Very truly yours,

/s/ BEVERLY K. THOMPSON
Beverly K. Thompson

BKT/jb
Enc.
c.c. Judith S. Musicant, Esquire

[Letterhead of UNIVERSITY OF PENNSYLVANIA,
Division of Neurosurgery, Philadelphia, PA]

Thomas A. Gennarelli, M.D., Assistant Professor

March 3, 1982

TO WHOM IT MAY CONCERN:

RE: Beverly Thompson

Beverly Thompson has had a recurrence of the neurosurgical problems for which I have treated her. She now has a right side radiculopathy. I have arranged an admission to the Hospital of the University of Pennsylvania on March 14 and repeat myelography on March 15. If surgery is indicated she will be unable to resume her regular duties as an attorney until approximately July 1, 1982.

Sincerely,

/s/ THOMAS A. GENNARELLI, M.D.
Thomas A. Gennarelli, M.D.

TAG:jq

[Letterhead of UNITED STATES DISTRICT COURT,
Camden, N.J.]

March 30, 1982

Beverly K. Thompson, Esquire
Segal & Thompson
3820 Church Road
Mt. Laurel, New Jersey 08054

Judith S. Musicant, Esquire
540 Broad Street
Newark, New Jersey 07101

Re: Ennis v. New Jersey Bell Telephone,
Civil No. 80-3633(G)

Dear Counsel:

It is my understanding that the Honorable John F. Gerry has rescheduled this matter for trial to Tuesday July 6, 1982. The rescheduling is due, in part, to the illness of Ms. Thompson.

I must note that I have rescheduled matters for each of you on several occasions and I must point out that the Joint Final Pre-Trial Order was due on March 1, 1982 and I heard nothing from either of you about it and I have not received a Joint Final Pre-Trial Order.

Notwithstanding the illness of Ms. Thompson, I see no reason why the Joint Final Pre-Trial Order cannot be promptly prepared. However, in what I regard as an extremely lengthy amount of time for an extension to submit it, I will permit it to be mailed to me, as signed by both of you, on or before May 26, 1982. If I am not in receipt of the order by that time, I shall have no alternative but to recommend to Judge Gerry that sanctions be imposed which may include the dismissal of the action and/or monetary fines against offending counsel and/or their clients.

Very truly yours,

/s/ JAMES F. HAMMILL
James F. Hammill
United States Magistrate

JFH:bg
cc: Honorable John F. Gerry
Patrick H. Ronga, Deputy Clerk

[Letterhead of NEW JERSEY BELL TELEPHONE COMPANY, Newark, N.J.]

April 2, 1982

Hon. James F. Hammill
United States District Court
401 Market Street
Camden, New Jersey 08101

Re: Regina S. Ennis v. New Jersey Bell Telephone Company, et als.
Civil Action No. 80-3633

Dear Judge Hammill:

I am receipt of your March 30th letter regarding counsels' failure to submit a Joint Final Pre-Trial Order in this matter. I can only plead guilty to thoughtlessness, and ask your forgiveness. Back in February, after the last adjournment of the trial in this case to April 26th, I had a conversation with Ms. Simons wherein we agreed that in light of the adjournment, the filing schedule for the Joint Pre-Trial Order and other pre-trial documents would be moved forward. Said agreement was confirmed by letter to Judge Gerry, a copy of which I enclose herein. Inasmuch as I was dealing with Judge Gerry's chambers concerning this matter, it did not occur to me that I should, of course, have copied you with the letter at that time. I was completely remiss in not doing so, and I regret the inconvenience that you have been caused with regard thereto. Please be assured that the Joint Pre-Trial Order shall be

submitted on or before May 26th in accordance with your instruction.

Respectfully yours,

/s/ JUDITH S. MUSICANT
Judith S. Musicant

SPECIAL DELIVERY

JSM:gmc
Enclosure

cc: Beverly K. Thompson, Esq.

Special Delivery

[Letterhead of NEW JERSEY BELL TELEPHONE COMPANY, Newark, N.J.]

February 5, 1982

Hon. John F. Gerry
United States District Court
401 Market Street
Camden, New Jersey 08101

Re: Regina Ennis v. New Jersey Bell Telephone Co., et al
Civil Action No. 80-3633

Dear Judge Gerry:

This letter confirms my conversation with Ms. Simons wherein it was agreed that in light of your vacation schedule the Motion for Summary Judgment in the above captioned matter would be returnable on March 5, 1982, and furthermore that the trial date is adjourned to April 26, 1982. We also agreed that in view of the new trial date, the dates for filing the joint pre-trial order and other pre-trial documents would be moved forward, and those documents submitted in accordance with the same time-frame schedule which was in effect for the March 15th trial date.

Respectfully yours,

/s/ JUDITH S. MUSICANT
Judith S. Musicant

JSM:gml

cc: Beverly K. Thompson, Esq.

[Letterhead of NEW JERSEY BELL TELEPHONE COMPANY, Newark, N.J.]

April 2, 1982

Hon. James F. Hammill
United States District Court
401 Market Street
Camden, New Jersey 08101

Re: Regina S. Ennis v. New Jersey Bell Telephone Company, et als.
Civil Action No. 80-3633

Dear Judge Hammill:

In light of plaintiff's refusal to do other than insist on complete responses to her discovery request, nothwithstanding defendant's stated willingness to consider submitting additional information upon plaintiff's showing of a particularized need, defendant obviously has no choice but to file the enclosed brief and affidavit in response to her Motion to Compel. However, I don't believe that each point in a suit need be handled in this highly litigious manner. Therefore, notwithstanding my strong belief, as expressed in defendant's responsive brief, that we have supplied plaintiff with more information than what can be considered relevant in this matter, I would not be adverse to a conference with counsel held under your auspices in order to resolve the dispute herein.

Respectfully yours,

/s/ JUDITH S. MUSICANT
Judith S. Musicant

JSM:gmc
Enclosures

SPECIAL DELIVERY

cc: w/enc.: Beverly K. Thompson, Esq.
Special Delivery

[Letterhead of UNITED STATES DISTRICT COURT,
Camden, NJ]

April 6, 1982

Beverly K. Thompson, Esquire
Segal & Thompson
3820 Church Road
Mt. Laurel, New Jersey 08054

Judith S. Musicant, Esquire
540 Broad Street
Newark, New Jersey 07101

Re: Ennis v. New Jersey Bell Telephone,
Civil No. 80-3633(G)

Dear Counsel:

I have just received Ms. Musicant's correspondence under cover letter dated April 2, 1982 concerning your discovery disputes and requesting a conference before me to resolve them. Please be advised that the only available date I have at this time is 1:00 P.M. on Wednesday April 28, 1982. Accordingly, unless Ms. Thompson is actually hospitalized, I will expect both of you here on Wednesday April 28, 1982 at 1:00 P.M. so that I may conduct a status conference in the above action, resolve outstanding discovery disputes and discuss any other aspects of the litigation which you may wish to bring to my attention.

Very truly yours,

/s/ JAMES F. HAMMILL
James F. Hammill
United States Magistrate

JFH:bg

cc: Honorable John F. Gerry
Patrick H. Ronga, Deputy Clerk

[Letterhead of SEGAL & THOMPSON, P.A.,
Mt. Laurel, New Jersey]

Please Reply To: Phila.

May 7, 1982

Honorable James F. Hammill
United States District Court
401 Market Street
Camden, New Jersey 08101

Re: Ennis v. New Jersey Bell Telephone Co.

Dear Judge Hammill:

Enclosed please find a copy correspondence which I received from my neuro-surgeon, Michael J. O'Conner, M.D., responding to my request for his estimate of when I may return to my practice after the forthcoming surgery. I believe the correspondence to be self-explanatory, and I would therefore request that the above-captioned matter be removed from the trial list of Judge Gerry for July 6, 1982 and instead placed upon his trial list in September or October.

Your consideration in this matter is greatly appreciated. Should you have any further questions or wish to discuss same, please do not hesitate to contact us.

Very truly yours,

Beverly K. Thompson

BKT/jb

cc: Judith S. Musicant, Esquire
Honorable John F. Gerry

[Letterhead of MICHAEL J. O'CONNER, M.D.,
Division of Neurosurgery, Philadelphia, PA]

May 3, 1982

Beverly K. Thompson, Esq.
Suite 960, One Franklin Plaza
Phila. Pa. 19102

Dear Ms. Thompson:

You have requested of me an estimated date after which you will be available to resume your full schedule of professional responsibilities.

I am sure that you understand that it is impossible for me to give you an exact date, as I cannot predict how well your recovery will progress.

If all goes well, you should be able to resume your full schedule by September 1, 1982. However, I must emphasize that that date may vary depending upon your progress.

Sincerely yours,

/s/ MICHAEL J. O'CONNER, M.D.
Michael J. O'Conner, M.D.

MJO/mr

[Letterhead of UNITED STATES DISTRICT COURT,
Camden, NJ]

May 24, 1982

Beverly K. Thompson, Esquire
Segal & Thompson
Suite 960
One Franklin Plaza
Philadelphia, Pennsylvania 19102

Judith S. Musicant, Esquire
New Jersey Bell Telephone Company
540 Broad Street
Newark, New Jersey 07101

Re: Ennis v. New Jersey Bell Telephone Co.,
Civil No. 80-3633(G)

Dear Counsel:

In light of Ms. Thompson's letter to me of May 7, 1982 and the enclosure which accompanied it concerning Ms. Thompson's health, I am adjourning the trial of the above case from July 6, 1982 to Monday October 18, 1982.

Please note the above new trial date and in addition, I remind you that trial briefs and requests to charge shall be delivered to Judge Gerry and served upon opposing counsel on or before the close of the business day of October 13, 1982.

Very truly yours,

/s/ JAMES F. HAMMILL
James F. Hammill
United States Magistrate

JFH:bg

cc: Honorable John F. Gerry
Patrick H. Ronga, Deputy Clerk

[Letterhead of BEVERLY K. THOMPSON, P.A.,
Westmont, New Jersey]

Please Reply To: Phila.

September 9, 1982

Honorable John F. Gerry
U.S. District Court of New Jersey
Camden, New Jersey 08101

Re: Ennis v. New Jersey Bell

Dear Judge Gerry:

This letter will serve to confirm the telephone conversation of September 8, 1982, between your law clerk, Ms. Simon, and my secretary, Joeann Buchholz, with regard to the above-captioned matter. It is my understanding that the Court had granted the Plaintiff an extension of time within which to respond to Defendant's Motion for Summary Judgment, the filing date being no later than September 20, 1982, and to be heard before the Court on October 1, 1982.

Further, it is my understanding that said extension is granted even though opposing counsel will not consent to same.

Thank you for your courtesy and kind cooperation with regard to this matter. Should you wish to discuss same, please contact my office as indicated above.

Very truly yours,

BEVERLY K. THOMPSON, P.A.

/s/ BEVERLY K. THOMPSON,/mc
Beverly K. Thompson

BKT/mc

cc: Judith S. Musicant, Esquire

Dictated but not read.

[Letterhead of AMERICAN TELEPHONE AND TELEGRAPH COMPANY, Morristown, NJ]

October 12, 1982

Honorable James F. Hammill
United States District Court
401 Market Street
Camden, New Jersey 08101

Re: Regina S. Ennis VS. New Jersey Bell Telephone Company
Civil # 80-3633

Dear Judge Hammill:

As per your instructions of October 12, enclosed please find original and one copy of a proposed Order in this matter. If same meets with your approval, I would appreciate your signing same and returning a filed copy to the undersigned in the envelope provided.

Respectfully submitted,

/s/ JUDITH S. MUSICANT
Judith S. Musicant

JSM:jlb
Encl.
cc: Hon. John F. Gerry
cc: Beverly K. Thompson, Esq. w/encl.

[Letterhead of AMERICAN TELEPHONE AND TELEGRAPH COMPANY, Morristown, NJ]

October 21, 1982

Beverly K. Thompson, P. A.
Suite 930
One Franklin Plaza
Philadelphia, Pennsylvania 19102

Re: Ennis vs. New Jersey Bell Telephone Company

Dear Ms. Thompson:

In view of the fact that there is presently a Court Order in existence barring the testimony of your experts at trial, I see no reason to depose either of your experts at this time.

Very truly yours,

/s/ JUDITH S. MUSICANT
Judith S. Musicant

JSM:jlb

cc: Honorable John F. Gerry
cc: Honorable James F. Hammill

[Letterhead of BEVERLY K. THOMPSON, P.A.,
Westmont, New Jersey]

Please Reply To: Phila.

March 23, 1983

Honorable John F. Gerry
United States District Court
Court House Building
401 Market Street
Camden, New Jersey 08101

Re: Ennis v. New Jersey Bell Telephone Company
Civil Action No. 80-3633

Dear Judge Gerry:

Pursuant to my telephone conversation with your secretary of this date, enclosed please find a copy of the letter from Ms. Thompson's physician.

I am sorry for any inconvenience this may have caused.

Very truly yours,

BEVERLY K. THOMPSON, P.A.

/s/ MAUREEN CORBETT
Maureen Corbett

MC
Enc.

cc: Edward F. Ryan, Esquire

[Letterhead of MICHAEL J. O'CONNOR, M.D.,
Division of Neurosurgery, Graduate Hospital,
Philadelphia, PA]

March 11, 1983

Beverly K. Thompson, Esq.
Suite 960, One Franklin Plaza
Phila. Pa. 19102

Dear Ms. Thompson:

You have requested of me an estimated date after which you will be available to resume your full schedule of professional responsibilities.

I am sure that you understand that it is impossible for me to give you an exact date, as I cannot predict how well your recovery will progress.

If all goes well, you should be able to resume your full schedule by May 1, 1983. However, I must emphasize that this date may vary depending upon your progress.

Sincerely yours,

/s/ MICHAEL J. O'CONNOR, M.D.
Chief, Division of Neurosurgery

MJO:mr

[Letterhead of CARPENTER, BENNETT & MORRISSEY,
Newark, N.J.]

October 18, 1983

Mr. Patrick H. Ronga
Deputy Clerk
U. S. District Court
District of New Jersey
U. S. Courthouse &
Post Office Building
Camden, New Jersey 08101

Re: Ennis v. New Jersey Bell
Civil Action No. 80-3663

Dear Mr. Ronga:

This will confirm your telephone call to my secretary advising that a tentative trial date in the above matter has been set for November 7, 1983. For the reasons set forth in my letter of October 11, 1983 to Judge Gerry, a copy of which is attached hereto, it will be difficult for us to begin trial of this matter before Tuesday, November 15, 1983. However, we will do our best to have the matter ready for trial by November 7.

As requested, a copy of this letter is being sent to The Honorable John F. Gerry, U.S.D.J. and plaintiff's counsel, Beverly K. Thompson, Esq.

Very truly yours,

CARPENTER, BENNETT & MORRISSEY

/s/ FRANCIS X. DEE
Francis X. Dee

FXD:sm
Enclosure

cc: The Honorable John F. Gerry, U.S.D.J. (w/enc.)
Beverly K. Thompson, Esq. (w/enc.)

[Letterhead of CARPENTER, BENNETT & MORRISSEY,
Newark, N.J.]

October 11, 1983

The Honorable John F. Gerry, Judge
U. S. District Court
District of New Jersey
U. S. Courthouse and Post Office Building
Camden, New Jersey

Re: Ennis v. N. J. Bell Telephone Co.
Civil Action No. 80-3663

Dear Judge Gerry:

On October 3, 1983, we received a notice scheduling the above matter for trial on October 17, 1983.

We had expected that trial of this matter would occur in late November or early December. In August, plaintiff named additional witnesses including two experts. We have arrangements to depose, on October 12, plaintiff's medical expert, Dr. William J. King, and one of plaintiff's other witnesses. We are having difficulty locating the two other witnesses plaintiff intends to call on trial and plaintiff's counsel advises us that she does not have their addresses. In addition, we will need at least two weeks to engage an expert statistician and have him analyze the report of plaintiff's statistician, which is dated August 30, 1983. Until we have this analysis performed, we will not be able to conduct an intelligent deposition of plaintiff's statistician.

In view of the above, and current scheduling problems during the week of October 17, we respectfully request that trial of this matter be rescheduled to any time after November 15, 1983.

Plaintiff's counsel has advised that she will object to this postponement request. However, since the current scheduling difficulties were caused by her conduct in belatedly listing trial witnesses, we submit that her position is untenable. Unless plaintiff's additional witnesses, including her statistician, are excluded as trial witnesses, defendant will be severely prejudiced if forced to proceed with trial of this matter before mid-November.

Respectfully submitted,

CARPENTER, BENNETT & MORRISSEY
Attorneys for Defendant

/s/ FRANCIS X. DEE
Francis X. Dee

FXD:el
cc: Beverly K. Thompson, P.A.

[Letterhead of CARPENTER, BENNETT & MORRISSEY, Newark, N.J.]

February 2, 1984

The Honorable John F. Gerry, Judge
U. S. District Court
District of New Jersey
U. S. Courthouse and Post Office Building
Camden, New Jersey 08101

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No. 80-3633

Dear Judge Gerry:

We received telephone notice on Tuesday afternoon that the above matter is scheduled for trial on Monday, February 6, 1984.

I am scheduled to begin a trial next week in the United States District Court for the Eastern District of Pennsylvania before the Honorable Donald W. VanArtsdale on a case which was filed in August, 1980. I expect that that case will consume several days of trial.

Plaintiff has failed to respond to our demand for her compliance with Magistrate Simandle's Order, dated December 30, 1983, directing that plaintiff produce, within ten days, the following: (1) plaintiff's entire medical records; (2) the tape-recorded version of Dr. King's report; and (3) Dr. King for his continued deposition. A copy of our letter to plaintiff's counsel, dated January 11, 1984, demanding her compliance with Magistrate Simandle's Order, is enclosed herewith. Plaintiff's counsel has continued in her refusal to comply with Magistrate Simandle's Order despite the fact that the Magistrate granted her an extension of time within which to do so. That extension of time expired on Friday, January 27, 1984, without any response at all from plaintiff's counsel. In addition, plaintiff's counsel cancelled the deposition of her statistical expert, Dr.

Cole, which had been rescheduled for November 2, 1983, pending the Court's decision on our discovery motion regarding Dr. King. After the Court decided that motion, we attempted to reschedule Dr. Cole's deposition, but plaintiff's counsel has not responded, presumably because of her medical condition. In this regard, we refer the Court's attention to our letter dated November 1, 1983 and our letter dated January 11, 1984, copies of which we attach hereto.

In addition, we respectfully renew our request, set forth in our enclosed letter to the Court dated October 31, 1983, that the Court conduct a pre-trial conference in this matter, in order to define the issues for trial, identify the witnesses and their anticipated areas of testimony, and resolve these other problems we have encountered in attempting to secure discovery from plaintiff's counsel. Most, if not all, of the difficulties regarding plaintiff's witnesses set forth in the enclosed letter, dated October 31, 1983, still exist.

We are anxious to try this case as quickly as possible; however, our client would be severely prejudiced if we are forced to trial without having secured the proper discovery. Furthermore, without a pre-trial conference, we believe it will be unduly time-consuming and confusing to try this case under the present circumstances. We have been indulgent of our adversary's medical problems; however, we cannot prejudice our client by proceeding to trial on a case that is not ready through no fault of ours.

Respectfully submitted,

CARPENTER, BENNETT & MORRISSEY

/s/ FRANCIS X. DEE
Francis X. Dee

FXD:151:el
Enclosure
cc: Beverly K. Thompson (Express Mail, w/encl.)
Hon. Jerome B. Simandle (w/encl.)

October 31, 1983

The Honorable John F. Gerry, Judge
U.S. District Court
District of New Jersey
U.S. Courthouse and Post Office Building
Camden, New Jersey 08101

Re: Ennis v. N.J. Bell Telephone Company

Dear Judge Gerry:

We have been notified that the above matter has been scheduled for trial beginning Monday, November 7, 1983.

In our October 11, 1983 letter to you, we anticipated that we would not be ready for trial before November 15, 1983. However, unforeseen difficulties require us to request that trial be delayed for about three weeks.

If you recall, trial in late 1982 was adjourned because plaintiff evidenced intent to call additional witnesses including a medical expert and statistical expert. An order was entered on July 21, 1983, requiring plaintiff to:

1. Furnish the written report of Dr. William King, plaintiff's physician, concerning the subject matter of his anticipated trial testimony.

2. Identify and furnish the written report of any other expert witness plaintiff intended to call as a witness at trial.

3. Identify which of certain individuals plaintiff intended to call as witnesses at trial.

4. Identify the person previously described in a deposition subpoena as "Personnel Manager of New Jersey Bell", and the subject matter of the deposition testimony sought from this person.

Defendant was afforded the opportunity to depose the aforesaid witnesses newly identified by plaintiff pursuant to the Court's Order, at plaintiff's cost.

The deposition of plaintiff's physician and medical expert, Dr. William King, was scheduled for October 12, 1983. It was postponed to Wednesday, October 19, 1983, at plaintiff's request because of Dr. King's unavailability due to an emergency. When the undersigned arrived in Philadelphia for the deposition on that date, I was advised that Dr. King could not appear that date due to another emergency. The deposition was rescheduled for Friday, October 21, at which time it was taken. However, as can be seen from the discovery motion filed herewith, defendant was denied access to critical information without which its medical expert cannot render a rebuttal report.

The deposition of plaintiff's statistical expert, Dr. James Cole, is scheduled for November 2, 1983 in Philadelphia. We expect that it will take five working days after that deposition for defendant's statistical expert to prepare a rebuttal report.

In addition, neither party has been able to locate plaintiff's witness, B. J. White. Defendant was advised for the first time on Wednesday, October 19, 1983, that the witness previously referred to by plaintiff as Timothy Howard is actually named Karlton Howard. Furthermore, plaintiff has not yet provided the address of plaintiff's witness Laurie Brewer even though plaintiff has taken the position that we must subpoena her to a deposition.

Plaintiff has not yet identified the documents from Local 827 IBEW's files that she intends to offer in evidence at trial. Therefore, defendant has no idea what witnesses and documents will be necessary for cross-examination or rebuttal relating to those documents.

Finally, although plaintiff's witnesses have been identified, we have not been informed even as to the general nature of their anticipated testimony. For example, R. F. Johnson, a union representative, has been listed as a witness. It is impossible, however, to determine whether rebuttal evidence will be necessary since no indication is given as to the nature of his anticipated testimony.

For all the foregoing reasons, we request that trial of this matter be adjourned for a few weeks and that the Court conduct a pre-trial conference to resolved some outstanding trial issues in an attempt to expedite trial of this matter.

Very truly yours,

CARPENTER, BENNET & MORRISSEY

/s/ _____
Francis X. Dee

FXD:el
cc: Beverly K. Thompson, Esq.
Mr. Patrick Ronga

November 1, 1983

The Honorable John F. Gerry, Judge
U.S. District Court
District of New Jersey
U. S. Courthouse and Post
Office Building
Camden, New Jersey 08101

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No. 80-3633

Dear Judge Gerry:

At 2:10 p.m. this afternoon I received a telephone call from Beverly Thompson's legal assistant who advised that Ms. Thompson was deferring the deposition of Dr. Cole, which was scheduled for tomorrow afternoon, until the Court ruled on the discovery motion regarding Dr. King. In view of this development, I must renew our request for an adjournment of the pending trial until these matters can be resolved.

Thank you for your courtesy in this regard.

Very truly yours,

CARPENTER, BENNET & MORRISSEY

Francis X. Dee

FXD:sm
EXPRESS MAIL

cc: Beverly K. Thompson, Esq.

November 1, 1983

Beverly K. Thompson, P.A.
One Franklin Plaza
Suite 930
Philadelphia, Pennsylvania 19102

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No. 80-3633

Dear Ms. Thompson:

At 2:10 p.m. today I received a call from your legal assistant, Robin Turner, who advised that because we filed a discovery motion with regard to Dr. King's deposition, you were deferring the deposition of Dr. Cole until the Court defines the limit of discovery. I do not understand how the discovery motion regarding Dr. King's deposition is related to the deposition of Dr. Cole. I object strenuously to your cancellation of Dr. Cole's deposition under such circumstances and on such short notice. Your refusal to speak with me on the telephone to resolve this matter is also objectionable.

Very truly yours,

CARPENTER, BENNET & MORRISSEY

Francis X. Dee

FXD:sm
EXPRESS MAIL

[Letterhead of CARPENTER, BENNETT & MORRISSEY
Newark, NJ]

January 11, 1984

Beverly K. Thompson, P.A.
One Franklin Plaza
Suite 930
Philadelphia, Pennsylvania 19102

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No. 80-3633

Dear Ms. Thompson:

In his Letter Opinion and Order dated December 30, 1983, Magistrate Simandle directed the production of plaintiff's entire medical records by January 9, 1984, unless you moved for a protective order regarding information clearly outside the scope of discovery. In addition, Magistrate Simandle ordered that the tape-recorded version of Dr. King's report be produced by January 9, 1984. To date, we have not received any such medical records or tape recording, nor any copy or other notification of your submission of any materials or motions to the court. Thus, pursuant to Magistrate Simandle's directive, we hereby demand the production of plaintiff's medical records and Dr. King's taped draft of his report. Kindly notify us immediately to make arrangements for the production of these materials forthwith.

Magistrate Simandle has also directed that the continued deposition of Dr. King be conducted no later than January 23, 1984. Accordingly, we suggest either Tuesday, January 17, 1984 or Wednesday, January 18, 1984 as the date for the continuation of Dr. King's deposition pursuant to Magistrate Simandle's Order. Kindly notify us immediately if Dr. King cannot be available on either of these dates. We are willing to conduct the deposition at whichever of your offices you designate.

In addition, on November 1, 1983, your legal assistant, Robin Turner, advised me that because we filed the discovery motion regarding Dr. King's deposition, you refused to produce plaintiff's statistician, Dr. Cole, for his deposition until the Court defined the scope of discovery. I advised Ms. Turner that I did not understand how the discovery motion regarding the deposition of Dr. King, plaintiff's treating physician, was related to the deposition of Dr. Cole, plaintiff's expert statistician. In any event, since the Court has now ruled upon our motion regarding Dr. King, your reason for refusing to produce Dr. Cole no longer exists. Therefore, we hereby propose to conduct the deposition of Dr. Cole on Monday, January 30, 1984 or Tuesday, January 31, 1984, in whichever of your offices you designate. Kindly notify us immediately if either you or Dr. Cole cannot be available on that date and suggest alternate dates.

Very truly yours,

CARPENTER, BENNETT & MORRISSEY

/s/ FRANCIS X. DEE
Francis X. Dee

FXD/151/LT

cc: Beverly K. Thompson, Esq.
1301 East Marlton Pike
Cherry Hill, New Jersey 08034

cc: Hon. Jerome B. Simandle

[Letterhead of BEVERLY K. THOMPSON, P.A.,
Philadelphia, Pennsylvania]

Please Reply To: Philadelphia

February 6, 1984

Magistrate Jerome B. Simandle
United States Post Office
401 Market Street
Camden, New Jersey 08101

Re: Ennis vs. N.J. Bell

Dear Magistrate Simandle:

Regarding our correspondence to Your Honor, dated January 30, 1984, please note that the ommission of opposing counsel, Mr. Dee, as having received a courtesy copy of said correspondence was inadvertent. Mr. Dee has, in fact, been mailed a copy of that correspondence.

Very truly yours,

BEVERLY K. THOMPSON, P.A.

/s/ BEVERLY K. THOMPSON/rlt
Beverly K. Thompson

BKT/rlt

cc: Honorable John F. Gerry
Francis Dee, Esquire
M. Mark Mendel, Esquire

[Letterhead of CARPENTER, BENNETT & MORRISSEY,
Newark, NJ]

February 10, 1984

Magistrate Jerome B. Simandle
United States District Court
United States Post Office Bldg.
401 Market Street
Camden, New Jersey 08101

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No. 80-3633

Dear Magistrate Simandle:

I have your letter of February 6, 1984 with enclosed letter of January 30, 1984 from Beverly K. Thompson. I also received this date Ms. Thompson's letter of February 6, 1984 to you. Although I do not think it necessary to reply to Ms. Thompson's January 30, 1984 letter, I wish to point out that that letter was never received by us until it was forwarded with your letter of February 6.

Very truly yours,

CARPENTER, BENNETT & MORRISSEY

/s/ FRANCIS X. DEE

Francis X. Dee

FXD: sm

cc: The Honorable John F. Gerry
Beverly K. Thompson, Esq.

(CERTIFIED MAIL/R.R.R.—#P28 1807443)

[Letterhead of CARPENTER, BENNETT & MORRISSEY,
Newark, NJ]

March 6, 1984

HAND DELIVERY

Robert J. McCaughey, Deputy Clerk
United States District Court
U.S. Courthouse & P.O. Building
Camden, New Jersey 08101

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No. 80-3633

Dear Sir:

Enclosed herewith for filing in the above captioned matter please find the original Notice of Motion, supporting Affidavit, and proposed form of Order. Please be advised that we have spoken to Judge Gerry's law clerk, Maida Crane, and Judge Gerry's court clerk, Pat Ronga, and have received permission to file this motion on short notice, because of Judge Gerry's desire to list this matter for trial. We also enclose an extra copy of the Notice of Motion. Kindly mark these moving papers with the date and fact of filing and return the extra copy of the Notice of Motion to our messenger.

Thank you for your attention in this matter.

Very truly yours,

CARPENTER, BENNETT & MORRISSEY

Francis X. Dee

FXD/151/LT

Enclosures

cc: Hon. John F. Gerry [w./encl.]
Hon. Jerome B. Simandle [w/encl.]
Beverly K. Thompson, Esq. [w/encl.]
CM, RRR, #P281807313
Suite 110, Station House
900 Haddon Avenue
Collingswood, New Jersey 08108

Beverly K. Thompson, Esq. [w/encl.] *HAND DELIVERY*
One Franklin Plaza
Suite 930
Philadelphia, PA 19102

[Letterhead of CARPENTER, BENNETT & MORRISSEY,
Newark, NJ]

March 8, 1984

EXPRESS MAIL

Beverly K. Thompson, Esq.
1616 Walnut Street
Suite 2100
Philadelphia, Pennsylvania 19102

Re: Ennis v. New Jersey Bell Telephone Company
Civil Action No. 80-3633

Dear Ms. Thompson:

On Tuesday afternoon, March 6, 1984, a messenger employed by this firm attempted to effect service of defendant's moving papers upon you by hand delivery at One Franklin Plaza, Suite 930, in Philadelphia, which is the address you have represented as the place of your principal office throughout the entire course of this litigation, at least since February 1983, when this firm was substituted as counsel for defendant. Upon his arrival at One Franklin Plaza, however, our messenger was advised that you have not maintained an office at that location for about four or five months, and that you left no forwarding address. When the messenger telephoned our office for further instructions, we called the telephone number by which we have been contacting you recently (not the number on your letterhead), and were advised that you have, in fact, moved your office from One Franklin Plaza to 1616 Walnut Street.

We are at a loss to understand why you have never advised us of that change in address. You apparently never advised the Court of that change in address, either, as evidenced by the fact that Magistrate Simandle's most recent correspondence to you is addressed to One Franklin Plaza. Indeed, you had the audacity to call Magistrate Simandle to task for failing to get correspondence and notices to you in a timely fashion, when it

is now obvious that the reason for any late receipt of your mail was that you moved your Philadelphia office without bothering to comply with your obligation to notify the Court and your adversary. It has now become apparent that you have used this alleged difficulty in receiving your mail as just another excuse for failing to comply with your discovery obligations in this case, as is clearly evidenced by your letter to Magistrate Simandle dated January 30, 1984.

Kindly be advised that we believe we should no longer be required to incur the expense and inconvenience of having a messenger roam around Philadelphia looking for your latest place of business. We are entitled, under the Local Rules of the District of New Jersey, to be able to serve all notices, orders and pleadings upon you at an office within the District of New Jersey. It is clear that you no longer maintain an office in New Jersey; as our most recent correspondence addressed to your supposed office in Collingswood, New Jersey have been returned to us marked "Addressee Unknown", and there is no telephone listing for you in Collingswood. In addition, it has been several months since you have maintained an office at the Westwood, New Jersey address still shown on your letterhead.

Accordingly, we hereby demand that you notify us immediately of the address of your New Jersey office, if any, or the address of your designated local counsel in New Jersey upon whom all further notices, orders, pleadings and correspondence may be served, in accordance with the local rules and practices of the District of New Jersey.

Very truly yours,

CARPENTER, BENNETT & MORRISSEY

/s/ FRANCIS X. DEE
Francis X. Dee

FXD:151:el

cc: Hon. John F. Gerry [Express Mail]
Hon. Jerome B. Simandle [Express Mail]

[Letterhead of BEVERLY K. THOMPSON, P.A.,
Philadelphia, PA 19102]

March 9, 1984

Please Reply To: Philadelphia

The Hon. John F. Gerry
United States District Court
United States Courthouse
401 Market Street
Camden, New Jersey

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No. 80-3633

Dear Judge Gerry:

On the afternoon of Tuesday, March 6, 1984, at approximately 4:30 P.M., Defendant's pending Motion for Discovery Sanctions and to Award Expenses and Attorney Fees was hand delivered to my office, along with Defense counsel's letter indicating that he was requesting permission to file this motion on short notice. Although defense counsel's aforementioned letter recites Your Honor's desire to list this matter for trial as the basis for his request to file the motion on short notice, to my knowledge, my office has received no communication from the Court, either oral or written, that this matter is to be listed for trial immediately.

Further, less than one week prior to filing his motion on short notice, opposing counsel was well aware that I had been hospitalized and completely out of my office for over a month and of the voluminous correspondence, telephone messages and pleadings which awaited me upon my return. I have attached hereto a copy of correspondence from my Legal Assistant, Robin L. Turner, confirming that she had informed

opposing counsel of those facts when she had spoken with him by telephone. I have also enclosed a letter to Your Honor from one of my physicians, Jan Schneider, M.D., who has been the primary physician treating me for the past few months. His letter should clarify any question as to the verity and necessity of my absence.

While my health may appear at first glance to be a significant factor delaying this matter, I am certain that Your Honor will not allow the obfuscation created by the timing of opposing counsel's flurry of activity at those times when he knows that plaintiff's counsel is least able respond. Opposing counsel entered this case in November, 1982, and thereafter took absolutely no action to communicate with plaintiff's counsel or otherwise until approximately June, 1983. Subsequently, in a telephone conversation on October 11, 1983, with plaintiff's counsel, Mr. Dee, primary counsel for defendant, admitted that he was not yet ready to go to trial because his firm had just assigned the case to him and he had not yet had time to even review the entire file in the matter. I am sure that this Honorable will not ignore that Mr. Dee's only efforts to push this matter forward have occurred throughout a particular four month period when plaintiff's counsel was impaired, whereas during those months from November, 1982 through October, 1983, when plaintiff's counsel was available, Mr. Dee made little or no effort to proceed.

Defendant's motion having been filed on short notice and served at 4:30 P.M. on March 6, 1984, allows plaintiff only two working days to review and respond to documents well in excess of forty (40) pages excluding exhibits, and this once again at a time when Mr. Dee is well aware of the circumstances. For this and all of the foregoing reasons, plaintiff most respectfully objects to this motion being listed on short notice and requests that this Honorable Court list the matter for the regular return day which would have been April 6, 1984, according to the timing of defendant's filing.

Very truly yours,

BEVERLY K. THOMPSON, P.A.

/s/ BEVERLY K. THOMPSON
Beverly K. Thompson

Enclosures

cc: Hon. Jerome B. Simandle [w/encl.]
Francis X. Dee, Esquire [w/encl.]

[Letterhead of BEVERLY K. THOMPSON, P.A.,
Philadelphia, Pennsylvania]

March 2, 1984

Mr. John Bennett, Esq.
Carpenter, Bennett & Morrissey
744 Broad Street
Newark, New Jersey 07102

Re: Ennis v. New Jersey Bell

Dear Mr. Bennett:

Confirming our telephone conversation of February 28, Ms. Thompson has been ill and hospitalized on two separate occassions since December 1, 1983, having spent a total of four days in the office since that time. She was discharged from the hospital Sunday, February 26, 1984, and has been in the office for the first time this afternoon. There are seven stacks of mail, each over 10 inches high to be reviewed. I am sure she will be more than happy to answer your letter of February 29, 1984, as soon as physically possible.

Sincerely,

/s/ ROBIN L. TURNER
Robin L. Turner
Legal Assistant

[Letterhead of THE MEDICAL COLLEGE OF PENNSYLVANIA
Department of Obstetrics and Gynecology
Philadelphia, Pennsylvania]

March 8, 1984

The Honorable John F. Gerry:

RE: Beverly K. Thompson, Esq.

Dear Judge Gerry:

This letter is to confirm that Ms. Beverly Thompson is currently a patient under my care. She is now at 20 weeks in her first pregnancy. Her problems began in mid-December when she had considerable difficulty with abdominal pain. We were unable to diagnose this at first but later realized that this was due to viral gastroenteritis. During the past two months she has had considerable and increasing health difficulty. Her viral infection has affected both her upper respiratory and intestinal tracts. This required her to be hospitalized twice for re-hydration and for management of the infectious process. This was particulary complicated since it coincided with pregnancy.

Ms. Thompson's admissions to the hospital were from 01/03/84 through 01/09/84 and again from 02/20/84 to 02/26/84. On both occasions she required intravenous therapy and was quite ill. At the time of her discharge I admonished her firmly to rest as much as she could. I believe this to be important for her health and that of her unborn child. Her health would not permit her to be involved in any legal activity during the times of hospitalization and indeed has severely restricted her activity for almost three months.

If you need any additional information please do not hesitate to phone me at the above number. Thank you.

Sincerely,

/s/ JAN SCHNEIDER, M.D.
Jan Schneider, M.D.

JS/dan

[Letterhead of CARPENTER, BENNETT & MORRISSEY,
Newark, New Jersey]

March 19, 1984

Beverly K. Thompson, Esq.
2627 Jarvis Road
Sicklerville, New Jersey 08081

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No. 80-3633

Dear Ms. Thompson:

We enclose a set of copies of the proposed form of Order, cover letter to Judge Gerry, and attached Order of July 21, 1983, which were inadvertently sent to your former mailing address in Collingswood, New Jersey, rather than the Sicklerville, New Jersey address which you announced during the proceedings on Monday, March 12, 1984. We assume, however, that the set of these same materials sent to your office at 1616 Walnut Street in Philadelphia by express mail in Thursday, March 15, 1984 arrived at your office on Thursday, March 16, 1984. We have noted the change of your New Jersey address in our correspondence file, and will send all future correspondence, motion papers, and other materials to your Sicklerville, New Jersey address.

Very truly yours,

CARPENTER, BENNETT & MORRISSEY

Francis X. Dee

FXD/151/LT
Enclosures
cc: Hon. John F. Gerry [w/o encl.]
Beverly K. Thompson, Esq. [w/o encl.] (PA Office)

[Letterhead of UNITED STATES DISTRICT COURT,
Camden, N.J.]

March 27, 1984

Beverly K. Thompson, Esquire
2627 Jarvis Road
Sicklerville, New Jersey 08081

Beverly K. Thompson, Esquire
1616 Walnut Street
Philadelphia, Pennsylvania 19102

Francis X. Dee, Esquire
Carpenter, Bennett & Morrissey
744 Broad Street
Newark, New Jersey 07102

Re: Ennis v. New Jersey Bell Telephone Company,
Civil No. 80-3633(G)

Dear Counsel:

I shall conduct a settlement conference in the above matter on April 5, 1984 at 12:00 Noon. Please arrange to be present.

Very truly yours,

/s/ JEROME B. SIMANDLE
Jerome B. Simandle
United States Magistrate

JBS:bg

cc: Honorable John F. Gerry
Patrick H. Ronga, Deputy Clerk

[Letterhead of UNITED STATES DISTRICT COURT,
Camden, N.J.]

April 4, 1984

Beverly K. Thompson, Esquire
2627 Jarvis Road
Sicklerville, New Jersey 08081

Beverly K. Thompson, Esquire
1616 Walnut Street
Philadelphia, Pennsylvania 19102

Francis X. Dee, Esquire
Carpenter, Bennett & Morrissey
744 Broad Street
Newark, New Jersey 07102

Re: Ennis v. New Jersey Bell Telephone Company,
Civil No. 80-3633(G)

Dear Counsel:

The settlement conference scheduled in this case for April 5, 1984, was adjourned on April 4 at the request of Ms. Thompson's secretary, owing to Ms. Thompson's unavailability due to the sale of a farm in Ohio.

My attempt to reschedule this conference for April 11 was unsuccessful, due to Ms. Thompson's unavailability on account of two conflicting trials during the weeks of April 9 and 16, 1984.

Therefore, the settlement conference has been rescheduled for Tuesday, April 24, 1984 at 10:30 A.M. The trial date of April 30, 1984 remains firm before the Honorable John F. Gerry if this case is not amicably resolved.

Very truly yours,

/s/ JEROME B. SIMANDLE
Jerome B. Simandle
United States Magistrate

JBS:fln

cc: Honorable John F. Gerry
Patrick H. Ronga, Deputy Clerk

[Letterhead of CARPENTER, BENNETT & MORRISSEY, Newark, N.J.]

April 13, 1984

Beverly K. Thompson, Esq.
1616 Walnut Street
Philadelphia, Pennsylvania 19102

Re: Ennis v. New Jersey Bell
Civil Action No. 80-3633

Dear Ms. Thompson:

The copy of the executed Order entered by the Court on April 3, 1984 in the above matter which we attempted to serve upon you at your address in Sicklerville, New Jersey, by Express Mail, has been returned to us because delivery was unsuccessful, on April 9, 1984 and April 10, 1984. During the motion proceedings held on March 12, 1984 you stated before the Court that this Sicklerville address was your official address for service of process in New Jersey, and that thee would be someone there to accept service on a daily basis, even if only for half of the day. However, the return of this latest correspondence after two unsuccessful attempts at delivery indicates that there is, in fact, no one at this address to receive service. Therefore, kindly advise us of the New Jersey address, if any, to which we should send further correspondence and pleadings in this matter.

We assume, of course, that the copy of the Order sent to your Philadelphia address was effectively served. Thus, you know that the Order provides, in Paragraph 4, that you were required to provide us, by April 10, 1984, with a description of the substance of the anticipated testimony of the persons whom you may be called upon to testify on behalf of the plaintiff at trial. To date, we have not received this information. Kindly provide us with this information immediately, so

that we may make the decision whether the depositions of these witnesses will be necessary. It is imperative that we be served with this information immediately, for otherwise the taking of these depositions will interfere with other preparation for the trial in this matter.

Very truly yours,

CARPENTER, BENNETT & MORRISSEY

Francis X. Dee

FXD/151/LT

cc: Honorable John F. Gerry

[Letterhead of BEVERLY K. THOMPSON, P.A.,
Philadelphia, PA]

April 23, 1984

John Bennett, Esq.
Carpenter, Bennett & Morrissey
744 Broad Street
Newark, New Jersey 07102

Re: Ennis v. New Jersey Bell

Dear Mr. Bennett:

Confirming the telephone conversations between you and my legal assistant, Robin L. Turner, of this date, April 23, 1984, in which she repeatedly assured you of my willingness to communicate with you either upon my return from trial (after 6 p.m. from the office) or if you would leave a home telephone number, I would call you at home. During same, she explained that I have gone from one trial directly into another.

Your response to the above was not only negative, but disbelieving. You insinuated that I had no intention of contacting you and therefore you were going to contact the Honorable John F. Gerry immediately. You categorically refused to make yourself available after 6 p.m.

May I remind you that one human being (visa vei a law firm with multiple attorneys), can only be in one place at one time. Certainly if your motivation is the seeking of justice rather than the manipulation of circumstances, then you will agree that the issue is important enough to cooperate.

Very truly,

BEVERLY K. THOMPSON, P.A.

/s/ BEVERLY K. THOMPSON
Beverly K. Thompson

BKT/rlt

cc: Honorable John F. Gerry
Honorable Jerome B. Simandle

dictated/not read

[Letterhead of CARPENTER, BENNETT & MORRISSEY,
Newark, NJ]

April 26, 1984

Beverly K. Thompson, Esq.
1616 Walnut Street
Philadelphia, Pennsylvania 19102

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No. 80-3633

Dear Ms. Thompson:

Your letter of April 23, 1984, purportedly "confirming" my telephone conversations with your legal assistant, Robin Turner, is inaccurate and untrue in many respects. Indeed, your letter confirms nothing but your disturbing practice of communicating with us regarding compliance with your discovery obligations only after we have been forced to apply to the Court for relief.

The conversation to which your letter inaccurately refers was merely the last in a series of unsuccessful efforts to confer with you in an attempt to resolve your most recent discovery derelictions. Thus, it must be placed in the proper context. Your April 23, 1984 letter suggests that we did not allow you the opportunity to confer with us regarding these continuing discovery problems. However, the truth is that you have had more than ample opportunity to communicate with us regarding your obligations under Judge Gerry's Order of April 3, 1984.

On April 13, 1984, we sent you a letter requesting that you provide us with the discovery compelled by Judge Gerry in paragraph 4 of his April 3, 1984 Order, which discovery should have provided on or before April 10, 1984. We explained to you the importance of your prompt compliance with Judge Gerry's Order, so as to prevent interference with our other

preparation for trial in this action, which at the time was set peremptorily for April 30, 1984. Nevertheless, you made absolutely no response or other communication to us regarding this April 13, 1984 letter; nor did you make any efforts to comply with Judge Gerry's Order.

On Friday, April 20, 1984, at about 3:45 p.m., I telephoned your Philadelphia office in order to ascertain whether you intended to comply with Judge Gerry's Order of April 3, 1984, or whether we would again be forced to apply to Judge Gerry for relief. Your legal assistant, Robin Turner, answered the call and, after I identified myself, stated that you were there in your office, but that she had to check whether you were available to speak with me. Ms. Turner then put me on "hold" for about a minute. Ms. Turner then got back on the telephone and advised me that you had been out of the office for the past two weeks, in Ohio, and that you were in your office that afternoon for the first time in two weeks. Ms. Turner stated that you were in conference with a client, but that she would take my message for you. I told Ms. Turner that we needed to know your position regarding your compliance with Judge Gerry's Order of April 3, 1984. To be specific, I further told Ms. Turner that paragraphs 4 and 5 of Judge Gerry's Order require you to provide us with certain discovery by certain dates, both of which have passed. Therefore, I asked Ms. Turner to ask you to call me and advise me whether you intended to comply with Judge Gerry's Order in these respects, or whether we would be forced to apply to Judge Gerry again for further relief. Ms. Turner stated that she would give you this message, and would ask you to return my call. I advised Ms. Turner that I would be in the office for about another hour that afternoon, April 20, 1984, and all day on Monday, April 23, 1984.

At about one o'clock on Monday afternoon, April 23, 1984, I again telephoned your office in an attempt to confer with you regarding your noncompliance with Judge Gerry's Order, since you had not returned my call of the previous Friday afternoon. On this occasion, Ms. Turner stated that you were out of your

office all day, in a trial, but that you would be calling your office at some point during the day, at which time she would tell you that I called again. I advised Ms. Turner that we could not allow any further delay, since we were preparing for trial in this matter, and needed the discovery which Judge Gerry has ordered. I informed Ms. Turner that we would be forced to file papers with Judge Gerry that afternoon, so that these issues could be resolved prior to trial, which was then just days away. Ms. Turner stated that she would give you this message.

At about 2:30 p.m. on Monday afternoon, only minutes after our messenger had left for Camden to file our motion, Ms. Turner called my office and stated that she had given you my earlier message, and that you would be available to speak with me some time after 6 o'clock that evening. Based upon this representation and your past conduct, particularly your disregard for our attempts at obtaining court-ordered discovery, not only now but also in January and February 1984, I formed the opinion, and I believe reasonably so, that you simply were not very concerned about our need for this discovery. Thus, I advised Ms. Turner that given your past track record, I had no great faith that you would return my call. Accordingly, I informed Ms. Turner that I could not allow another entire day to be wasted before we were able to present these discovery issues to Judge Gerry, because of our immediate need for this discovery for our trial preparation.

Contrary to your April 23, 1984 letter, Ms. Turner did *not* ask me for my home telephone number. Therefore, I did *not* refuse to give her my home number. Indeed, I was in my office until 7 o'clock on Monday evening, April 23, 1984, but you did not call.

In sum, you clearly had more than enough time (three weeks) within which to comply with the simple discovery obligations set forth in paragraphs 4 and 5 of Judge Gerry's Order of April 3, 1984, or at least to advise us of your intentions regarding compliance with these obligations. Indeed, it was not until Tuesday's settlement conference before

Magistrate Simandle, for which you were nearly three hours late, that you announced your intention of applying for interlocutory review of Judge Gerry's April 3, 1984 Order.

Since you have forwarded your inaccurate letter to Judge Gerry and Magistrate Simandle, we are forced to forward our response to them as well.

Sincerely yours,

CARPENTER, BENNETT & MORRISSEY

/s/ JOHN K. BENNETT
John K. Bennett

JKB/LT

cc: Hon. John F. Gerry
Hon. Jerome Simandle

[Letterhead of UNITED STATES DISTRICT COURT,
Camden, NJ]

April 26, 1984

Beverly K. Thompson, Esquire
Suite 2100, 1616 Walnut Street
Philadelphia, Pennsylvania 19102

Francis X. Dee, Esquire
Carpenter, Bennett & Morrissey
744 Broad Street
Newark, New Jersey 07102

Re: Ennis v. New Jersey Bell,
Civil No. 80-3633(G)

Dear Counsel:

This letter will confirm the discussions at our settlement conference on April 24, 1984, it appearing that attempts at settlement have been unsuccessful.

The trial date will be adjourned from April 30, 1984 until June 25, 1984, when trial will commence before the Honorable John F. Gerry.

The defendant's motions to dismiss for plaintiff's failure to obey discovery orders and to limit issues for a jury trial, filed April 23, 1984 and previously returnable April 30, 1984 on short notice, will be adjourned and heard on May 18, 1984.

Ms. Thompson has indicated that she intends to file a motion for certification of an issue for appeal pursuant to 28 U.S.C. § 1292(b). Any such motion shall be filed not later than April 27, 1984 to be returnable before the Honorable John F. Gerry on May 18, 1984. Any opposition thereto should be delivered to Judge Gerry not later than May 8, 1984.

With respect to any issues to be tried by the court without a jury, proposed findings of fact and conclusions of law shall be

delivered to Judge Gerry not later than June 18, 1984. With respect to any issues to be tried to a jury, proposed jury charges shall be delivered to Judge Gerry not later than June 18, 1984. In either case, trial briefs should be delivered to Judge Gerry not later than June 20, 1984.

The court will conduct a settlement conference at anytime it is requested by any party.

Very truly yours,

/s/ JEROME B. SIMANDLE
Jerome B. Simandle
United States Magistrate

JBS:bg

cc: Honorable John F. Gerry
Patrick H. Ronga, Deputy Clerk

[Letterhead of UNITED STATES DISTRICT COURT,
Camden, NJ]

April 26, 1984

Beverly K. Thompson, Esquire
Suite 2100, 1616 Walnut Street
Philadelphia, Pennsylvania 19102

Re: Ennis v. New Jersey Bell,
Civil No. 80-3633

Dear Ms. Thompson:

In light of the recent history of this case, I must question whether you maintain a full-time office for the practice of law in the State of New Jersey, as required by the rules of this court. You apparently receive communications and telephone calls only in your Philadelphia Office, and I find little evidence of any New Jersey Office activity. If I am incorrect, please advise.

Not later than May 2, 1984 kindly inform Judge Gerry, the Clerk of the Court, and the undersigned in writing regarding the address and telephone number of your bona fide New Jersey Office for the practice of law. Kindly send a copy of that information to defense counsel in this case.

Very truly yours,

/s/ JEROME B. SIMANDLE
Jerome B. Simandle
United States Magistrate

JBS:bg

cc: Honorable John F. Gerry
Robert J. McCaughey, Deputy Clerk-in-Charge
Francis X. Dee, Esquire

[Letterhead of CARPENTER, BENNETT & MORRISSEY,
Newark, NJ]

April 30, 1984

Beverly K. Thompson, Esq.
1616 Walnut Street
Philadelphia, Pennsylvania 19102

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No. 80-3633

Dear Ms. Thompson:

Our latest correspondence directed to you at your Sicklerville, New Jersey office was again returned. Enclosed is a photocopy of the envelope which indicates that you "moved, left no address". Please advise us how we can reach you at your New Jersey office.

Very truly yours,

CARPENTER, BENNETT & MORRISSEY

/s/ FRANCIS X. DEE
Francis X. Dee

FXD:sm
Enclosure

cc: Honorable John F. Gerry (w/enc.)
Honorable Jerome B. Simandle (w/encl.)

LAW OFFICES
CARPENTER, BENNETT & MORRISSEY
744 BROAD STREET
NEWARK, N. J. 07102

CERTIFIED Mail
Return Receipt Requested

FIRST CLASS MAIL

Beverly K. Thompson, Esq.
2627 Jarvis Rd.
Sicklerville, NJ 08081

EXD

CERTIFIED
P28 1810387
MAIL

A-59

[Letterhead of BEVERLY K. THOMPSON, P.A., Cherry Hill, NJ]

May 2, 1984

Honorable Jerome B. Simandle
U.S. Magistrate
Room 428, U.S. Courthouse
Camden, New Jersey

Re: Ennis v. New Jersey Bell

Dear Magistrate Simandle,

Noting the receipt on Monday of Your Honor's letter dated, April 26, 1984, and requesting a response no later than May 2, 1984, I spoke with your clerk, Jane, and informed her that Ms. Thompson was ill with what presently appears to be a recurrence of the respiratory infection that she has suffered since December. As soon as Ms. Thompson is back in the office, she will be more than happy to discuss the matter with you further.

Sincerely,

/s/ ROBIN L. TURNER
Robin L. Turner
Legal Assistant

[Letterhead of UNITED STATES DISTRICT COURT,
Camden, NJ]

May 3, 1984

Beverly K. Thompson, Esquire
Suite 2100, 1616 Walnut Street
Philadelphia, Pennsylvania 19102

Re: Ennis v. New Jersey Bell,
Civil No. 80-3633(G)

Dear Ms. Thompson:

On April 26, 1984, I wrote to you directing you to advise me in writing regarding the address and telephone number of your bona fide New Jersey office for the practice of law. I asked that this information be supplied to me, to Judge Gerry and to the Clerk of the Court not later than May 2, 1984.

On May 2, 1984 I was informed that my Law Clerk had received a call from a Robin Turner, who said she was calling on your behalf. She indicated that you have had a recurrence of a bronchial infection, and she said that your New Jersey telephone number is "(609) 429-1690."

I find this reply to be unresponsive to my request. What is the address of your bona fide New Jersey office for the practice of law? What is your telephone number at that bona fide office?

Your *written* reply to these questions shall be expected within twenty-four (24) hours of your receipt of this letter.

I am also distressed to note that Mr. Dee has forwarded further evidence that your Sicklerville, New Jersey office does not exist. Namely, under cover of letter dated April 30, 1984, Mr. Dee has sent a photo copy of an envelope which indicates that you "moved, left no address."

You are directed to answer this request now in writing.

Very truly yours,

/s/ JEROME B. SIMANDLE
Jerome B. Simandle
United States Magistrate

JBS:bg

cc: Honorable John F. Gerry
Robert J. McCaughey, Deputy Clerk-in-Charge
Francis X. Dee, Esquire

[Letterhead of BEVERLY K. THOMPSON, P.A., Cherry Hill, NJ]

May 8, 1984

Honorable Jerome B. Simandle
U.S. Magistrate
Room 428, U.S. Courthouse
401 Market Street
Camden, New Jersey 08101

Re: Ennis v. New Jersey Bell
Civil Action No. 80-3633

Dear Judge Simandle,

Enclosed please find copies of the Motion for Certification and Leave to Appeal which I indicated when last we met would be filed shortly.

In response to your letter dated May 3, 1984, I note that my legal assistant, Robin L. Turner, promptly advised your office that I had once again suffered a recurrence of the same mycobacterial respiratory infection which previously resulted in my hospitalization and kept me out of my office arrangements which I directed Ms. Turner to send to the United States Postal Authorities. I believe same is self-explanatory. Although my current (and temporary) office arrangements in New Jersey may not meet the letter of New Jersey Rule 1:21, having discussed the matter at some length with Harold Rubinstein, Esq., Secretary of the Advisory Committee on Professional Ethics of the Supreme Court of New Jersey, I am assured that my efforts to provide an address and phone number where I, in fact, can be reached both in New Jersey and outside New Jersey, and my primary efforts to use what physical resources are available to first meet the responsibilities and obligations to my clients, are well within the spirit of the Rule, particularly in light of the circumstances.

I trust the above information meets Your Honor's immediate needs. However, should there be a need for any further information or discussion on this, please do not hesitate to contact me at the office and/or telephone number indicated above.

Very truly yours,

BEVERLY K. THOMPSON, P.A.

/s/ BEVERLY K. THOMPSON
Beverly K. Thompson

BKT/rlt

cc: Honorable John F. Gerry
Francis X. Dee, Esq.
Robert J. McCaughey, Deputy Clerk-in-Charge

[Letterhead of BEVERLY K. THOMPSON, P.A., Cherry Hill, NJ]

May 7, 1984

U.S. Postal Service
U.S. Post Office
Sicklerville, New Jersey 08081
Attn: U.S. Postmaster/Postmistress

Re: Change of Address

Dear Sir/Madam,

This will serve to confirm my conversation with you of May 5, 1984, wherein I advised you of the difficulty we have had in receiving forwarded mail. For the third time, please forward mail from:

Beverly K. Thompson, Esq.
2627 Jarvis Road
Sicklerville, N.J. 08081

TO: Beverly K. Thompson, Esq.
6 Galway Lane
Cherry Hill, N.J. 08304

Additionally, please do a thorough search of your records and send us a copy of the two previous chand of address forms which were presented on April 7, 1984, and May 1, 1984, as this has now become an issue affecting my credibility.

Sincerely,

BEVERLY K. THOMPSON, P.A.

/s/ BEVERLY K. THOMPSON
Beverly K. Thompson

BKT/rlt

[Letterhead of BEVERLY K. THOMPSON, P.A., Cherry Hill, NJ]

May 8, 1984

Honorable Jerome B. Simandle
U.S. Magistrate
Room 428, U.S. Courthouse
401 Market Street
Camden, New Jersey 08101

Re: Ennis v. New Jersey Bell
Civil Action No. 80-3633

Dear Judge Simandle,

This will serve to confirm the instructions received from Your Honor in the settlement conference of April 25, 1984, wherein you directed that our Motion for Certification and Leave to Appeal as well as Motions filed by defense counsel would all be made returnable on May 18, 1984. Pursuant to that instruction, we have filed and made our Motion returnable on that date and are assuming that Defendant's Motions are also returnable on that date.

Very truly yours,

BEVERLY K. THOMPSON, P.A.

/s/ BEVERLY K. THOMPSON
Beverly K. Thompson

BKT/rlt

cc: Francis X. Dee, Esq.

[Letterhead of UNITED STATES DISTRICT COURT,
Camden, N.J.]

Ms. Beverly K. Thompson, Esquire
6 Galway Lane
Cherry Hill, New Jersey 08034

Francis X. Dee, Esquire
Carpenter, Bennett & Morrissey
744 Broad Street
Newark, New Jersey 07102

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No. 80-3633

Dear Counsel:

During the oral argument on defendant New Jersey Bell Telephone Company's motion to dismiss for plaintiff's failure to obey discovery orders held on May 18, 1984, I informed you that I would notify you of the correspondence which I intend to make a part of the record of this case.

Enclosed please find copies of letters which to date have not been incorporated in the record by the parties, but upon which I will rely in disposing of this matter.

You have ten (10) days from receipt of this letter and the enclosed correspondence to submit to me any additional copies of correspondence which the court or counsel received in the past that you believe should also be included in the record.

Very truly yours,

/s/ JOHN F. GERRY
John F. Gerry, U.S.D.J.

[Correspondence to be Included in the Record of Ennis v. New Jersey Bell Telephone Co., Civil Action No. 80-3633.]

1. Letter from Ms. Thomson to Judge Gerry dated February 24, 1981.
2. Letter from Ms. Musicant to Magistrate Hammill dated November 20, 1981.
3. Letter from Ms. Thompson to Judge Gerry dated March 16, 1982.
4. Letter from Magistrate Hammill to counsel dated March 30, 1982.
5. Letter from Ms. Musicant to Magistrate Hammill dated April 2, 1982.
6. Letter from Ms. Musicant to Magistrate Hammill dated April 2, 1982, regarding Magistrate Hammill's March 30, 1982 letter.
7. Letter from Magistrate Hammill to counsel dated April 6, 1982.
8. Letter from Ms. Thompson to Magistrate Hammill dated May 7, 1982.
9. Letter from Magistrate Hammill to counsel dated May 24, 1982.
10. Letter from Ms. Thompson to Judge Gerry dated September 9, 1982.
11. Letter from Ms. Musicant to Magistrate Hammill dated October 12, 1982.
12. Letter from Ms. Musicant to Ms. Thompson dated October 21, 1982.
13. Letter from Ms. Thompson to Judge Gerry dated March 23, 1983.

14. Letter from Mr. Dee to Mr. Ronga dated October 18, 1983, with letter dated October 11, 1983 attached from Mr. Dee to Judge Gerry.

15. Letter from Mr. Dee to Judge Gerry dated February 2, 1984.

16. Letter from Ms. Thompson to Magistrate Simandle dated February 6, 1984.

17. Letter from Mr. Dee to Magistrate Simandle dated February 10, 1984.

18. Letter from Mr. Dee to Mr. McCaughey dated March 6, 1984.

19. Letter from Mr. Dee to Ms. Thompson dated March 8, 1984.

20. Letter from Ms. Thompson to Judge Gerry dated March 9, 1984.

21. Letter from Mr. Dee to Ms. Thompson dated March 19, 1984.

22. Letter from Magistrate Simandle to counsel dated March 27, 1984.

23. Letter from Magistrate Simandle to counsel dated April 4, 1984.

24. Letter from Mr. Dee to Ms. Thompson dated April 13, 1984.

25. Letter from Ms. Thompson to Mr. Bennett dated April 23, 1984.

26. Letter from Mr. Dee to Ms. Thompson dated April 26, 1984.

27. Letter from Magistrate Simandle to counsel dated April 26, 1984.

28. Letter from Magistrate Simandle to Ms. Thompson dated April 26, 1984.

29. Letter from Mr. Dee to Ms. Thompson dated April 30, 1984.

30. Letter from Robin Turner to Magistrate Simandle dated May 2, 1984.

31. Letter from Magistrate Simandle to Ms. Thompson dated May 3, 1984.

32. Letter from Beverly Thompson to Magistrate Simandle dated May 8, 1984.

33. Letter from Ms. Thompson to Magistrate Simandle dated May 8, 1984.

[Letterhead of BEVERLY K. THOMPSON, P.A., Cherry Hill, NJ]

June 25, 1984

The Honorable John F. Gerry
United States District Court for
The District Of New Jersey
United States Courthouse
& Post Office Building
401 Market Street
Camden, New Jersey 08101-0588

Re: Ennis v. New Jersey Bell Telephone Co.
Civil Action No.: 80-3633

Dear Judge Gerry:

Enclosed please find additional copies of correspondence which plaintiff's counsel has received or sent during the history of this case. Would you kindly also include this additional matter into the record. Thank you for your anticipated cooperation.

Very truly yours,

BEVERLY K. THOMPSON, P.A.

/s/ MARK J. MCCARRISTON
Mark. J. McCarriston

MJM/bjc
Enclosures

cc: Francis X. Dee, Esq. (w/enc.)